

AUG - 7 2007

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
ZELLA MAE GREEN,	)	CASE NO. 04-60083-MHM
	)	
Debtor.	)	
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ZELLA MAE GREEN,	)	
	)	
Plaintiff,	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 06-6048
LITTON LOAN SERVICING, L.P.;	)	
CITIGROUP GLOBAL MARKETS	)	
REALTY CORP., a subsidiary of	)	
CITIGROUP GLOBAL MARKETS, INC.	)	
f/k/a SALOMON BROTHERS REALTY	)	
CORP.; WELLS FARGO BANK, N.A.	)	
d/b/a AMERICA'S SERVICING	)	
COMPANY; WELLS FARGO HOME	)	
MORTGAGE, INC., a subsidiary of	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendants.	)	

**ORDER ON PLAINTIFF'S MOTIONS TO COMPEL**

This adversary proceeding is before the court on Plaintiff's motions to compel discovery. Plaintiff seeks an order compelling Defendant Wells Fargo Bank, N.A., s/b/m Wells Fargo Home Mortgage, Inc. and d/b/a America's Servicing Company ("Wells Fargo") to respond to certain discovery requests contained in Plaintiff's First Continuing Interrogatories (the "First Interrogatories") and Plaintiff's First Notice to Produce (the "Notice to Produce"); and to respond to Plaintiff's Second Continuing Interrogatories and Notice to Produce (collectively, the "Second

Requests"). Wells Fargo responded to Plaintiff's motions and both parties have filed supplements to their pleadings. Additionally, Wells Fargo has filed several supplemental responses to Plaintiff's First Interrogatories and Notice to Produce. Plaintiff seeks to compel responses to interrogatories 3, 4, 5, 7, 8, 9, 11, 14, 20 and 23 of the First Interrogatories. Plaintiff seeks to compel responses to requests 2, 3, 5, 6, 10, 11, 12, 13, 14 and 15 of the Notice to Produce. Plaintiff seeks to compel responses to all the Second Requests, and Wells Fargo objects to each of those interrogatories as overly broad, irrelevant, seeking privileged information, seeking proprietary information, and seeking information not reasonably calculated to lead to discovery of admissible evidence.

**First Interrogatories:**

No. 3: Wells Fargo appears to have adequately responded to this Interrogatory.

Nos. 4, 5, 7, 9: Wells Fargo asserts that it has produced documents that contain the requested information. Plaintiff complains that the 77 pages of documents produced by Wells Fargo are difficult to read and understand and extract the requested information. This type of problem with documents produced by mortgage companies has arisen previously and the undersigned recognizes that production of naked, usually unintelligible or coded records does not comply with the spirit of discovery. Therefore, Wells Fargo's attorney or, by affidavit, its designated representative, should provide to Plaintiff a written key to the abbreviations, code and structure of the documents produced, together with a written explanation, i.e. a road map, for where the information sought in each of the interrogatories can be found in the documents produced. Alternatively, at Wells Fargo's behest, Wells Fargo may arrange for a deposition of an employee of Wells Fargo with knowledge and experience sufficient to explain the documents and

point out to Plaintiff where each and every item of information requested by Plaintiff may be found in Wells Fargo's documents. Wells Fargo will be required to pay all expenses for such deposition.

No. 8: Wells Fargo does not appear to have responded to interrogatory No. 8, which requests an itemization of the current escrow payment, showing how it was calculated and the reasons for and amount of any increase or decrease during the last 18 months. The information requested by Plaintiff is reasonable and relevant and is not proprietary information. Wells Fargo should provide a clear response. Such response should not be attempted by production of coded documents from which Plaintiff is expected to extract the information requested (see above).

No. 11: Wells Fargo asserts that it has responded to this interrogatory. Plaintiff does not appear to dispute that assertion.

No. 14: Wells Fargo represents that, to the extent not already disclosed, it will supplement its response to this interrogatory, which requests that Wells Fargo identify each and every person who has any knowledge about the status of Plaintiff's loan. Plaintiff's interrogatory is overly broad. Wells Fargo should, to the extent it has not already done so, designate one or more employees who have, collectively, full and complete knowledge of the status of Plaintiff's loan. In addition to the other information requested in No. 14, Wells Fargo should, for each person designated, describe the type of information of which that person has knowledge with respect to Plaintiff's loan.

No. 20: Wells Fargo represents that, to the extent not already disclosed, it will supplement its response to this interrogatory, which requests that Wells Fargo set forth each and every fact leading to the execution of the "Affidavit of Lost Note." Although this request appears to seek

information more efficiently sought through deposition, following any supplement by Wells Fargo, if Plaintiff concludes Wells Fargo has not sufficiently responded, Plaintiff may file a supplemental motion to compel, which motion should set forth in detail the information already supplied by Wells Fargo and should also set forth in detail Plaintiff's reasons for believing that information is incomplete.

No. 23: Plaintiff requests that Wells Fargo identify the party that contracted with the law firm representing Wells Fargo. Without further justification, it does not appear that this information is relevant or reasonably calculated to lead to discovery of admissible evidence, and will be denied without prejudice.

#### **Notice to Produce**

No. 1: Plaintiff requests that Wells Fargo produce an account history. Plaintiff asserts that the documents produced by Wells Fargo are not legible, or are difficult to read and understand. See above comment regarding First Interrogatories Nos. 4, 5, 7, 9. Wells Fargo should provide a similar road map to the information about Plaintiff's account history. Alternatively, Wells Fargo may respond with an affidavit by a designated representative, which affidavit should include the information requested by Plaintiff in chart form; or Wells Fargo may arrange for a deposition of an employee of Wells Fargo with knowledge and experience sufficient to explain the documents and point out to Plaintiff where each and every item of information requested by Plaintiff may be found in Wells Fargo's documents. Wells Fargo will be required to pay all expenses for such deposition.

No. 2: Plaintiff requests that Wells Fargo produce copies of all billing statements for legal services charged to Debtor's account. Although it is reasonable for Debtor to request the totals,

and the dates and general types of services provided for the legal expenses charge to Debtor's account, the billing statements are not information that is relevant or reasonably calculated to lead to discovery of admissible evidence unless Wells Fargo seeks now or will in the future seek payment of same by Debtor.

No. 3: See above comment regarding First Interrogatories Nos. 4, 5, 7, 9.

No. 4: Plaintiff requests Wells Fargo to produce the original documents constituting proof of security interests in Plaintiff's real property. Wells Fargo asserts that it has produced true and correct copies. Plaintiff is not entitled to possession of the original documents, but Wells Fargo should, at a mutually agreeable time and place, make the original documents available for inspection by Plaintiff's attorney, thereby providing a reasonable bridge to using copies at trial if appropriate and agreed to by Plaintiff.

No. 5: Plaintiff requests that Wells Fargo produce the powers of attorney granted to servicing agents. Wells Fargo has objected on the grounds of relevance, and on the grounds that it seeks proprietary information. The relevance of Plaintiff's request is questionable. Therefore, Plaintiff should supplement its motion to compel to set forth specific facts or specific legal grounds that show the relevance of the request. If Plaintiff so supplements, and if Wells Fargo still objects to production, then Wells Fargo should, in its objection, set forth specific facts in support of its objection, especially the factual basis for its assertions that the information sought is proprietary information.

No. 6: Plaintiff requests that Wells Fargo produce all pooling and servicing agreements or trust agreements associated with Plaintiff's loan. Wells Fargo has objected on the grounds of relevance, and on the grounds that it seeks privileged or proprietary information or information

that would unduly invade privacy rights. The relevance of Plaintiff's request is questionable. Therefore, Plaintiff should supplement its motion to compel to set forth specific facts or specific legal grounds that show the relevance of the request. If Plaintiff so supplements, and if Wells Fargo still objects to production, then Wells Fargo should, in its objection, set forth specific facts in support of its objection.

Nos. 10, 11 and 13: The relevance of Plaintiff's requests is questionable. Therefore, Plaintiff should supplement its motion to compel to set forth specific facts or specific legal grounds that show the relevance of these requests.

Nos. 12 and 14: Plaintiffs seeks copies of correspondence between America's Servicing Company or Wells Fargo and any other Defendant. Wells Fargo objects on the grounds that the request seeks information protected by privacy rights or privilege. The information requested, however, appears relevant. Therefore, Wells Fargo should produce such documents or set forth specific facts (including an offer of *in camera* inspection by the court) and legal grounds supporting the objection.

No. 15: Plaintiff seeks copies of all documents relating to any merger involving Wells Fargo Home Mortgage, Inc. and Wells Fargo Bank, N.A. The relevance of Plaintiff's request is questionable. Therefore, Plaintiff should supplement its motion to compel to set forth specific facts or specific legal grounds that show the relevance of the request.

### **The Second Requests**

Plaintiff's Second Requests seek specific information and documents showing Wells Fargo's policies regarding document retention, storage and maintenance, retention of transferred servicing files, retention of transferred promissory note files, retention of computerized files,

retention of computerized mortgage and loan account records, and information about the chain of ownership of Plaintiff's loan documents from the inception of the loan. It appears that Wells Fargo has adequately responded to that last request. The remainder of the Second Requests do not appear, at this time, to be relevant or reasonably calculated to lead to discovery of admissible evidence.

Accordingly, it is hereby

**ORDERED** that Plaintiff's motion to compel responses to the First Interrogatories and Notice to Produce is granted, in part:

- Interrogatory Nos. 4, 5, 7, 8, 9, and Notices to Produce Nos. 1, 3: Within 20 days of the date of entry of this order, Wells Fargo's attorney or, by affidavit, its designated representative, shall provide to Plaintiff a written key to the abbreviations, coding and structure of the documents previously produced, together with a written explanation of where the information in each of the interrogatories can be found in the documents produced. Alternatively, within the same time period, Wells Fargo will arrange for a deposition of an employee of Wells Fargo with knowledge and experience sufficient to explain the documents and point out to Plaintiff where each and every item of information requested by Plaintiff may be found in Wells Fargo's documents. Wells Fargo shall pay all expenses for such deposition.
- Interrogatory No. 14: Within 15 days of the date of entry of this order, Wells Fargo shall, to the extent it has not already done so, designate one or more employees who have full and complete knowledge of the status of Plaintiff's loan. In addition to the

other information requested in No. 14, Wells Fargo shall, for each person designated, describe the type of information that person has with respect to Plaintiff's loan.

- Notice to Produce No. 2: Within 20 days of the date of entry of this order, Wells Fargo shall produce the totals, and the dates and general types of legal services charged to Debtor's account.
- Notice to Produce No. 4: Within 20 days of the date of entry of this order, Wells Fargo shall make the original documents available for inspection by Plaintiff's attorney.
- Nos. 12 and 14: Within 20 days of the date of entry of this order, Wells Fargo shall produce copies of correspondence between America's Servicing Company or Wells Fargo and any other Defendant.


As to Interrogatory Nos. 3, 11, 20 and 23, and Notice to Produce Nos. 5, 6, 10, 11, 13, and 15, Plaintiff's motion to compel is denied without prejudice. It is further

ORDERED that Plaintiff's motion to compel responses to the Second Requests is denied without prejudice. It is further

ORDERED that, as to any document or information compelled by this order that is not timely produced, use of said document or information by Wells Fargo in its defense in this adversary proceeding shall be prohibited.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendants' attorney, and the Chapter 13 Trustee.**

IT IS SO ORDERED, this the 7<sup>th</sup> day of August, 2007.

  
MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE